

Remarks:

Reconsideration of the application is requested.

Claims 1-12 remain in the application.

In the first paragraph on page 2 of the above-mentioned Office action, under the heading "Response to Arguments" the Examiner stated that the applicant argues that Comstock is limited to structures that are not evacuated. The Examiner further stated that the applicant is referred to page 3, lines 20-25, where it is stated that the inner and outer shells afford a suitable space therebetween... which may be exhausted of air.

In item 1 on page 2 of the Office action, claims 1-4 and 7 have been rejected as being fully anticipated by Comstock (U.S. Patent No. 1,898,977) under 35 U.S.C. § 102.

In item 3 on page 3 of the Office action, claims 5, 6, and 8-12 have been rejected as being obvious over Comstock (U.S. Patent No. 1,898,977) in view of Babbitt under 35 U.S.C. § 103.

As will be explained below, it is believed that the claims were patentable over the cited art in their original form and

the claims have, therefore, not been amended to overcome the references.

Before discussing the prior art in detail, it is believed that a brief review of the invention as claimed, would be helpful.

Claim 1 calls for, inter alia:

two outer covering layers having contours and disposed at a distance from one another, the two outer covering layers connected to one another in a vacuum-tight manner by a connecting profile running along the contours, the two outer covering layers together with the connecting profile enclosing an evacuated intermediate space filled with an evacuable heat insulating material, at least one of the two outer covering layers having an aperture formed therein; and

a tube section including two end sections, one of the two end sections having a circumferentially positioned flange-shaped expanded and flattened region fixed in a vacuum-tight manner at the aperture of the at least one of the two outer covering layers and being formed to compensate for

positional imprecisions between the aperture and the tube section.

Applicants respectfully disagree with the Examiner's interpretation of the statement that the inner and outer shells afford a suitable space therebetween ... which may be exhausted of air. It is the applicants' position, that claim 1 specifically calls for: "the two outer covering layers together with the connecting profile enclosing an evacuated intermediate space." (Emphasis added by applicants.).

Although Comstock provides a space, which can be exhausted of air, it is in no way comparable to "enclosing an evacuated intermediate space" as in the invention of the instant application. Comstock is filled with many statements proving he cannot achieve what is claimed by the invention of the instant application. First, he states on page 1, line 98, to page 2, line 20, that at the time of his invention it was "extremely difficult to provide absolutely air or gas-tight housings of considerable size in commercial quantities, especially when these vacuum containers are partially formed of metal sheets with soldered and/or welded joints or seams." Comstock does go on to disclose that it is possible to provide vacuum insulating chambers of this character which under ordinary conditions and use have only a low leakage rate (page 2, lines 3-7). He further discloses that in order to maintain a comparatively high vacuum within the insulating chamber

pumping means may be arranged to be more or less continuously operable, for example being tied into the cooling system of the unit (page 2, lines 8-15). Comstock further discloses that it is desirable to provide means to exhaust non-condensable gases from the system and to permit continued maintenance of a low pressure therein, since gas is likely to find its way slowly into the system from or through the metal walls or the joints of the same, and thus cause the pressure within the system to unduly rise (page 3, line 125 to page 4, line 2). Comstock further goes on to disclose his method for exhaustion of these gases (page 4, lines 3-103). Based on the above-noted disclosures of Comstock it is blatantly obvious that the space to be evacuated of air provided in Comstock is in no way comparable to the invention of the instant application, which provides enclosing an evacuated intermediate space.

Comstock, which issued in 1928, discloses a vacuum insulation as applied to refrigerators and the like. Comstock sets forth on page 1, line 98, to page 2, line 20, that at the time of his invention it was "extremely difficult to provide absolutely air or gas-tight housings of considerable size in commercial quantities, especially when these vacuum containers are partially formed of metal sheets with soldered and/or welded joints or seams." Comstock at page 1, line 97, to page 2, line 3 (emphasis added by applicants). Because, in

Comstock's time, the vacuum present in insulation walls leaked and was difficult to maintain, Comstock invented a "pumping means to maintain a comparatively high vacuum within the insulating chamber." Comstock at page 2, lines 7 to 10. The pumping means is configured to be used "in substantial continuous operation when the vacuum wall is in use as an insulating factor." Comstock at page 10, lines 9 to 12 (emphasis added by applicants). It is this pumping means that is the primary subject of Comstock.

On pages 8 and 9, Comstock describes the non-conducting bridge that is illustrated primarily in Figs. 4 and 5.

Clearly, the reference does not show or suggest:

two outer covering layers having contours and disposed at a distance from one another, the two outer covering layers connected to one another in a vacuum-tight manner by a connecting profile running along the contours, the two outer covering layers together with the connecting profile enclosing an evacuated intermediate space filled with an evacuable heat insulating material, at least one of the two outer covering layers having an aperture formed therein; and

a tube section including two end sections, one of the two end sections having a circumferentially positioned flange-shaped expanded and flattened region fixed in a vacuum-tight manner at the aperture of the at least one of the two outer covering layers and being formed to compensate for positional imprecisions between the aperture and the tube section,

as recited in claim 1 of the instant application.

Nowhere does Comstock disclose or suggest any aspect of positional tolerance correction, let alone describe a tube section end that compensates for positional imprecisions between the aperture and the tube section as set forth in the last paragraph of claim 1.

At best, applicants respectfully believe that any teaching, suggestion, or incentive possibly derived from Comstock is only present with hindsight judgment in view of the instant application. "It is impermissible, however, simply to engage in a hindsight reconstruction of the claimed invention, using the applicant's structure as a template and selecting elements from references to fill the gaps. . . . The references **themselves** must provide some teaching whereby the applicant's combination would have been obvious." In re Gorman, 18 USPQ2d

1885, 1888 (Fed. Cir. 1991) (emphasis added). Here, no such teachings are present in any of the cited references.

Applicants respectfully believe that vacuum-insulation technology is not a subdivision of insulation technology as a whole and, therefore, is not within the preview of one having ordinary skill in the art of insulation technology. Heat blockage based on vacuum-insulation technology is not a subgroup of conventional heat insulation technology.

Conventional technology almost exclusively uses foaming heat blocking materials, such as polyurethane or the like. Thus, such technology calls upon the knowledge of a chemist.

Vacuum-insulation technology, in contrast, is concerned mainly with free pathways of air molecules. Consequently, the knowledge of a physicist prevails. By definition, the different types of problems arising in these two technologies (which run parallel to each other rather than in series) require the use of different experts for overcoming the problems separately conditioned by each of the two different technologies.

It is accordingly believed to be clear that none of the references, whether taken alone or in any combination, either show or suggest the features of claim 1. Claim 1 is, therefore, believed to be patentable over the art and since

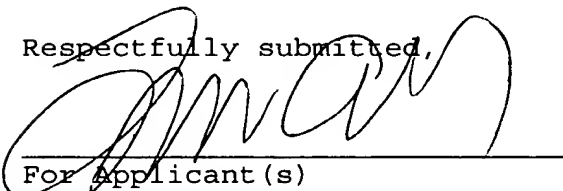
all of the dependent claims are ultimately dependent on claim 1, they are believed to be patentable as well.

In view of the foregoing, reconsideration and allowance of claims 1-12 are solicited.

In the event the Examiner should still find any of the claims to be unpatentable, counsel respectfully requests a telephone call so that, if possible, patentable language can be worked out.

Please charge any other fees which might be due with respect to Sections 1.16 and 1.17 to the Deposit Account of Lerner & Greenberg P.A., No. 12-1099.

Respectfully submitted,


For Applicant(s)

AKD:cgm

March 18, 2002

Lerner and Greenberg, P.A.
Post Office Box 2480
Hollywood, FL 33022-2480
Tel: (954) 925-1100
Fax: (954) 925-1101

RECEIVED
APR 01 2002
GROUP 3600

LAURENCE A. GREENBERG
REG. NO. 29,308